

Objection Deadline: June 15, 2009

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-and-

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Attorneys for TitanX Engine Cooling, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Chapter 11

General Motors Corp., et al.,

Case No. 09-50026 (REG)
(Jointly Administered)

Debtors.

**LIMITED OBJECTION OF TITANX ENGINE COOLING, INC.
TO THE NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND
ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES
OF PERSONAL PROPERTY AND UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY AND
(II) CURE AMOUNTS RELATED THERETO**

TitanX Engine Cooling, Inc. ("TitanX"), by its undersigned counsel, hereby objects on a limited basis ("Objection") to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property and Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto dated June 5, 2009

(“Notice”). TitanX objects to the Notice because it does not accurately state the Cure Amount¹ due to TitanX. In further support of its Objection, TitanX respectfully states as follows:

Background

1. On June 1, 2009 (“Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. On June 1, 2009, the Debtors also filed a motion seeking an order approving bidding procedures to sell substantially all of its assets, which included a procedure for the Debtors’ assumption and assignment of executory contracts (Docket No. 92) (“Procedures Motion”).

3. On June 2, 2009, the Court granted the Procedures Motion with respect to the sale procedures, including the procedure for assuming and assigning contracts to Vehicle Acquisition Holdings LLC (“VAH”) or the ultimate purchaser of the Debtors’ assets (Docket No. 274) (“Procedures Order”), which provided for sending a notice advising a contract counterparty that it is party to an Assumable Executory Contract and the Cure Amount related thereto.

4. On June 9, 2009, TitanX received the Notice dated June 5, 2009 provided for in the Procedures Order. Pursuant to the Notice, parties have ten days from the date of the Notice to object to the assumption and assignment of any Assumable Executory Contract or to the Cure Amount proposed to be paid with respect thereto.

¹ Capitalized terms not expressly defined herein have the meaning ascribed to them in the Notice.

5. Attached to the Notice is a user identification number and password to be used by TitanX on the specified website (“Web Site”) to view which contract has been designated an Assumable Executory Contract by the Debtors and the Cure Amount with respect to such contract.

6. Pursuant to the Web Site, the following are Assumable Executory Contracts to which TitanX is a counterparty: 2DFD0000, 2DFD0001, and 2DFD0002 (“TitanX Contracts”). The Debtors allege that there is no Cure Amount associated with the TitanX Contracts and have supplied the schedule annexed as **Exhibit A** in support of their allegation.

7. TitanX asserts it is owed \$240,000.00 in Cure Amount and the detail substantiating TitanX’s claim is attached as **Exhibit B**.

Objections

8. TitanX objects to the Notice on the following grounds:

A. The TitanX Contracts cannot be assumed without concurrent cure of all arrearages. “Section 365(b) of the executory contracts section of the Bankruptcy Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract.” In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002). The pre-petition Cure Amount alleged by the Debtors to be owed to TitanX pursuant to the TitanX Contracts is understated by \$240,000.00. The Debtors are missing one invoice (invoice #00004959) in the amount of \$240,000.00 dated April 28, 2009 from their calculus of the Cure Amount.

B. The TitanX Contracts cannot be assumed or assigned without an adequate showing of future performance. 11 U.S.C. § 365(b)(1); In re Luce Industries, Inc., 14 B.R. 529 (S.D.N.Y. 1981) (court erred in allowing debtor to assume agreement without assurance by debtor that arrearages would be paid and that debtor could

perform). Although adequate assurance of future performance may have been established in the Procedures Motion and other pleadings filed in this case as it relates to VAH, the proposed assignee may not yet even be known, much less is its ability to perform established.

9. TitanX reserves its right to amend this Objection to include any additional facts as may be determined by its further investigation of the Notice and TitanX Contracts.

10. Any reply to this Objection should be served upon Phillips Lytle LLP, 3400 HSBC Center, Buffalo, New York 14203, Attn: Angela Z. Miller, Esq.

Memorandum of Law

11. Because the legal points and authorities upon which TitanX relies for purposes of this Objection are incorporated into the Objection, TitanX respectfully requests that the Court deem satisfied or, alternatively, waive any requirement of the filing of a separate memorandum of law.

Reservation of Rights

12. TitanX reserves the right (a) to amend, supplement, or otherwise modify this Objection and all attachments and exhibits hereto as necessary or proper; and (b) to raise such other and further objections to any proposed assumption and assignment, and/or the Cure Amount with respect to the proposed assumption and assignment of the TitanX Contracts.

Conclusion

WHEREFORE, TitanX respectfully requests that the Court enter an Order (a) sustaining this Objection in its entirety and overruling the Notice to the extent it requests relief inconsistent with this Objection, and (b) providing TitanX with such other and further relief as is appropriate.

Dated: June 12, 2009
Buffalo, New York

PHILLIPS LYTTLE LLP

By s/ Angela Z. Miller
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Doc # 03-107774.1

EXHIBIT A

Contract Notices

User: GXxRhdy

[My Contracts](#) [Documents & Links](#)

Supplier Details

Vendor Master ID: **827556452**

Supplier Name: **TITANX ENGINE COOLING INC**
Contract Cure Amount:
of Contracts: **3**

[Click here to view Contracts](#)

Cure Amount Details

<u>Remit DUNS</u>	<u>PO Number</u>	<u>BOL</u>	<u>Document Date</u>	<u>Due Date</u>	<u>Amount</u>
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Important Notices:

All capitalized terms used, but not defined expressly on this website, have the meaning ascribed to such terms in that in the sale motion.

Purchaser's designation of a purchase order as "Noticed" also means that the Purchaser is designating for assumption and assignment all agreements expressly incorporated into and/or referenced in such purchase order.

All contract descriptions that appear in the "Contract ID" field are for purposes of contract identification only and shall not be binding on the Debtors or the Purchaser, as the case may be, or serve as an admission, for any purposes in the debtors' chapter 11 cases, including determining the parties' substantive rights under the contract, establishing the executory nature of a contract or establishing the Debtors' proposed treatment of the contract for purposes of contract assumption and assignment.

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June 12, 2009 @ 02:30:28 PM

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EXHIBIT B

GM Financial Shared Services
GM Disbursement Service
Manual PO Support Workgroup
PO Box 63070
Phoenix, AZ 85082-3070

May 19, 2009

TITAN ENGINE COOLING INC.
Attn: Accounts Receivable Department
2258 ALLEN STREET
JAMESTOWN, NEW YORK 14701-6957

The attached invoices are being returned for the reason(s) marked below:

PURCHASE ORDER	INVOICE/CREDIT	DATE	AMOUNT
2DFD0001	00004959	04/28/09	240000

- ☐ Invoice supplier is different from supplier on purchase order
- ☐ Invoice must reference ONLY ONE purchase order
- ☐ Bill freight separately
- ☐ Purchase order number is either omitted or is incorrect
- ☐ Purchase order revision number is either omitted or incorrect
- ☐ Item was previously paid on check/EFT no. dated / / .
- ☐ Copy of VTAM e-1810 form required
- ☐ Part on purchase order does not meet the PPAP status required for payment at this time. Please contact your buyer with any questions. (Minimum required status level: Interim C.)
- ☐ PPAP approval: PO issued / / , part approved / / .
PPAP must be current to issuance of purchase order or revision.
Please contact your buyer with any questions.
- ☐ Unable to obtain approval in order to process payment. Please contact your buyer with any questions.
- ☒ Other: Part has no sample status in GQTS. Please contact your buyer for further information.

Providing Financial Services for _____



GENERAL MOTORS CORPORATION



TitanX Engine Cooling Inc.
2258 Allen Street
Jamestown, New York 14701-6957
Phone (716) 665-7108 Fax (716) 665-7158

INVOICE	
BID NUMBER	DATE
00004959	4/28/09

** PAGE 1 **

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GENERAL MOTORS CORP
MANUAL PO SUPPORT WORKGROUP
PO BOX 63070
PHOENIX, AZ 85082-3070
USA

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GENERAL MOTORS CORP
MANUAL PO SUPPORT WORKGROUP
PO BOX 63070
PHOENIX, AZ 85082-3070
USA

SUPPLIER NO.	A.E.T.C. NO.	F.O.B.	CUST. NO.	DEST. NO.	FREIGHT			DATE SHIPPED	SHIPPER NO.
858481237		SHIPPING POINT	003015		PP&INV	COL	PPD	4/28/09	
						01			

REMARKS	SHIP VIA	TERMS	SLIMS
PO: 2DFD0001	BEST WAY		

QUANTITY SHIPPED	CUSTOMER NO. - NET WEIGHT		CONTAINERS		UNIT PRICE	U/M	AMOUNT
	WORK ORDER NO.	CUSTOMER ORDER NO.	QTY	TYPE			
1	TOOLING TOOLING				240,000.000		240,000.00
	<p>PAYMENT OF THIS INVOICE WILL CONSTITUTE THE ISSUANCE BY BUYER OF A CONTRACT AMENDMENT AND EVIDENCES THE AGREEMENT OF BUYER TO MODIFY THE PAYMENT TERMS UNDER STANDARD SPOT BUY CONTRACT NUMBER 2DF0000, ISSUED APRIL 15, 2009 RELATING TO TOOLING FOR MY 2010 GMT 900 DIESEL RADIATOR, AS FOLLOWS: BUYER WILL PAY SELLER \$ 240,000 OF THE TOTAL PRICE PRIOR TO SELLER BEGINNING PERFORMANCE OF THE CONTRACT; BUYER ACCEPTS THE REVISED SPENDING CURVE SUBMITTED BY SELLER TO BUYER ON APRIL 17, 2009. REF: P/N 20874168 TERMS: DUE UPON RECEIPT OF INVOICE</p>						
	PAYMENT DUE BY 4/28/09 TOTAL AMOUNT						240,000.00

<p>To ACH ACH Bank: Bank of New York, NY ABA number: 021000018 ACH Account Number 56100110018936001</p>	<p>REMIT TO TitanX Engine Cooling Inc. Lockbox # 6561 P.O. Box 6500 Philadelphia, PA 19178-8561</p>	<p>TOTAL =></p>	<p>240,000.00</p>
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US DOLLARS